

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Cost
Responsibility Surcharges for County and
Municipal Water Districts Which Generate Their
Own Electricity Pursuant To SB 1755.

FILED
PUBLIC UTILITIES
COMMISSION
SEPTEMBER 18, 2003
SAN FRANCISCO OFFICE
RULEMAKING 03-09-029

**ORDER INSTITUTING RULEMAKING
TO IMPLEMENT SENATE BILL 1755**

I. Summary

This order institutes a rulemaking to implement Senate Bill 1755 (SB 1755) (Stats. 2002, ch. 848), that was signed into law on September 24, 2002. SB 1755 added Public Utilities Code Sections 31149.7 and 71663.5 to the Water Code relating to electric power. SB 1755 authorizes county water districts and municipal water districts (districts) to provide, generate and deliver electricity, for their own purposes or sale to wholesale customers if there is surplus. SB 1755 does not permit retail sales. The statute requires districts that choose to provide for their own generation needs to reimburse jurisdictional utilities and the Department of Water Resources for certain liabilities relating to electric power purchase contracts. These payments are intended to protect utility customers from assuming liabilities entered into for the benefit of the districts and retail end use customers of the three major electric corporations.

This rulemaking proposes that the water districts pay the cost responsibility surcharge (CRS) now applied to other customer generation departing load customers, that is, those customers who purchase or consume

electricity supplied and delivered by what we term “customer generation” to replace all or part of the utility or direct access purchases. The Commission adopted the CRS for municipal departing load customers in D.03-07-028, as affirmed in D.03-07-028. (See D.02-11-022, as modified and affirmed by D.02-12-027, for CRS treatment of direct access customers; see D.03-04-030, as corrected by D.03-04-041, and modified and affirmed by D.03-05-039, for CRS treatment for customer generation departing load.)

II. SB 1755

SB 1755 authorizes county and municipal water districts to purchase and generate their own electrical power. In granting this authority, the legislation specifically recognizes that any water district that ceases taking service from a jurisdictional utility in order to generate its own power should assume responsibility for certain utility costs. SB 1755 expresses the intent of the Legislature in this regard is “to prevent any shifting of recoverable costs from districts that generate their own electricity pursuant to this section, to electrical corporation bundled customers.”¹

III. Preliminary Scoping Memo (Rule 6(c)(2))

A. Issues to be Considered

To implement SB 1755, the Commission will address several issues in this rulemaking, mainly as they concern the adoption or application of a CRS

¹ In this context “electrical corporation” refers to the electric utilities the Commission regulates. A “bundled customer” of the electric corporation or utility is one who subscribes to all utility services, including the commodity, distribution and transmission services.

designed to prevent cost-shifting from customers of electric utilities and the water district in the event the water district generates its own power.

SB 1755 provides that any water district “that has purchased electricity from an electrical corporation on or after February 1, 2001...bear a pro rata share of the Department of Water Resources’ electricity purchase costs, that are recoverable from electrical corporation customers in commission-approved rates.” (Water Code, § 31149.7 (e)(1).) It anticipates that a district generating its own electricity would pay “(a) charge equivalent to the charges that would otherwise be imposed on the district by the [C]ommission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources.” (Water Code, § 31149.7(f)(1).) This provision appears to refer to costs incurred by DWR for electricity used in previous periods and recovered in subsequent periods.

Similarly, a district that generates new offsite power will be responsible “for the additional costs of the Department of Water Resources, equal to the share of the Department of Water Resources’ estimated net unavoidable electricity purchase contract costs attributable to the district as determined by the commission, for the period commencing with the district’s initial generation of its offsite electricity, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.” (Water Code, § 31149.7(f)(2).)

SB 1755 anticipates that the Commission will establish a CRS for water districts who generate their own electricity. The CRS would allow the utility to recover costs the utility has been unable to avoid and which were incurred on behalf of all utility customers, such as costs associated with energy contracts

signed by and bonds issued by the Department of Water Resources during the energy crisis. (Water Code, § 366.2 (d)(e)(f).)

In sum, the CRS will include the following costs, determined in a manner consistent with the methodologies and modeling principles discussed in D.02-11-022 and related decisions in R.02-01-011:

- (1) DWR Bond charges
- (2) DWR Power charges
- (3) Utility-incurred charges, including but not limited to Utility Retained Generation (URG) charges, and tail-CTC costs.

To implement these sections of SB 1755, we solicit the parties' responses to the following questions:

1. Does either the CRS adopted for municipal entities in D.03-07-028 or the CRS adopted for customer generation departing load in D.03-04-030 automatically apply to the water districts that self-generate, as described in SB 1755? Explain why.
2. If neither the CRS adopted for municipal departing load (D.03-07-028) nor the CRS adopted for customer generation departing load (D.03-04-030) apply automatically to water districts that self-generate, should the applicability of either CRS be extended to apply to such water districts? Explain why or why not. If it should apply, how, if at all, should the utility tariffs be amended to make the charge applicable to water districts that are the subject of SB 1755, and what other modeling, accounting, or related coordination issues with the CRS applicable to other customer groups need to be addressed?

3. Are there other models or surcharges that are appropriately applied to water districts subject to SB 1755? For example, should the Commission adopt for the water districts that self-generate the same CRS treatment that was adopted for direct access customers (D.02-11-022, as modified by D.02-12-027), or customer generation departing load (D.03-04-030, as modified by D.03-04-041 and D.03-05-039)? Should the Commission adopt a hybrid treatment?

B. Preliminary Category Determination and Need for Hearing

We initiate a rulemaking that will consider the topics identified above. Pursuant to Rule 6(c), we preliminarily determine that this proceeding should be categorized as “ratesetting” as the term is defined in Rule 5(d) in recognition that the legislation requires the Commission to impose a surcharge to be collected from water districts under certain circumstances by jurisdictional utilities. The proposed schedule for Phase I of this proceeding is as follows:

Opening Comments	November 1, 2003
Reply Comments	November 15, 2003
Prehearing Conference	December 4, 2003

The Assigned Commissioner or administrative law judge may change the schedule for the sake of fair and efficient proceeding management, either by ruling or at a prehearing conference. At this time we do not anticipate a need for evidentiary hearings. However, we encourage the parties to address in their opening comments the need for such hearings and to identify material factual issues (and what evidence would be presented) that justify the necessity for evidentiary hearing. Parties may also address the need for evidentiary hearings in response to future pleadings, testimony, Commission decisions or rulings.

Any party filing opening comments may object to (1) the categorization of this consolidated proceeding as ratesetting (2) the determination that there is no need for evidentiary hearings and (3) the scope and schedule for the proceeding. Any party who proposes a evidentiary hearing should describe (1) material issues of fact and (2) the evidence the party would introduce at a hearing. At or after the prehearing conference, or as otherwise appropriate, the Assigned Commissioner will rule on the category, need for hearing, and scoping memo. That ruling, when issued, is appealable under the procedures in Rule 6.4.

C. Service List for Proceeding

Anyone wishing to be placed on the service list for this proceeding should inform the Commission's Process Office by electronic mail (ALJ_Process@cpuc.ca.gov) or in writing (Process Office, 505 Van Ness Avenue, San Francisco, California 94102) within 20 days of the mailing date of this order. Parties should refer to this proceeding number and include their name, the name of their representative (if any), address, and telephone numbers. Parties should also provide an e-mail address or indicate that no e-mail address is available. Thereafter, service list will be posted on the Commission's web site at www.cpus.ca.gov.

Parties interested in participating in this rulemaking who are unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Office in San Francisco at (415) 703-2074, or in Los Angeles at (213) 649-4782.

To reduce the burden of service in this proceeding, the Commission will use electronic service and delivery of documents whenever possible. Attachment A explains related procedures.

D. Intervenor Compensation

Any customer or representative of customers who intends to seek compensation should file and serve a notice of intent to claim compensation not later than 30 days after the prehearing conference held in this proceeding (Rule 1804(a)(1)). If the Commission does not hold a prehearing conference, the ALJ will notify the parties of an appropriate deadline for notices of intent. A separate ruling will address each requesting party's eligibility to claim compensation.

E. Ex Parte Communications

In this ratesetting proceeding, ex parte communications are permitted only if consistent with the restrictions set forth in Rule 7(c), are subject to the reporting requirements set forth in Rule 7.1.

Finding of Fact

SB 1755 requires the Commission to establish a "nonbypassable" surcharge for water districts that elect to generate their own power for utility recovery of certain costs.

Conclusion of Law

The Commission should open this rulemaking to fulfill the requirements of SB 1755 as set forth herein.

IT IS ORDERED that:

1. The Commission initiates a rulemaking to implement the provisions of Senate Bill 1755 as set forth herein.
2. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company shall, and other parties may, file comments on issues as set forth herein.

3. The Executive Director shall serve a copy of this order on all jurisdictional electrical utilities and all California water districts and municipal water districts, and entire service list for Rulemaking 02-01-011.

4. The Commission will hold a prehearing conference at 2:00 p.m., on December 4, 2003, in its Courtroom, at 505 Van Ness Avenue, State Office Building, San Francisco, unless otherwise scheduled by the assigned Commissioner or administrative law judge.

This order is effective today.

Dated September 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

ATTACHMENT A
ELECTRONIC SERVICE PROTOCOLS

1. Party Status in Commission Proceedings

These electronic service protocols apply to those individuals and entities who become “appearances” in this proceeding. In accordance with Commission practice, by entering an appearance at a hearing or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period. Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents. When individuals write to the Process Office to request to be on the service list, they should indicate if they wish to be an appearance, and if so, they should indicate how they intend to participate in the proceeding. Electronic service will allow those individuals on the state service and information only categories to easily monitor the proceeding, as we discuss below.

2. Service of Documents by Electronic Mail

To the extent possible, we intend to use electronic service in this proceeding. All individuals should provide electronic mail addresses and should indicate whether they consent to electronic service. We are hopeful that appearances shall be able to serve documents by electronic mail, and in turn, shall accept service by electronic mail. Electronic service allows for convenient,

efficient service and can also allow those on the state service information only portions of the service list to easily monitor the proceeding. In addition, paper copies shall be served on the assigned Commissioner and assigned ALJ.

3. Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

4. Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq., of the Commission's Rules of Practice and Procedure.

5. Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

- Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).
- Attach the document file to an electronic note.
- In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word 6.0/95.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon).

Parties should exercise good judgment regarding electronic mail service, and moderate the burden of paper management for recipients. For example, if a particularly complex matrix or cost-effectiveness study with complex tables is an attachment within a document mailed electronically, and it can be reasonably foreseen that most parties will have difficulty printing the matrix or tables, the sender should also serve paper copies by U.S. mail, and indicate that in the electronic note.

6. Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of electronic mail addresses:

- On the "Legal Documents" bar choose "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding (or click "edit," "find," type in R0010002, and click "find next").
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

7. Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

(END OF ATTACHMENT A)